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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/720,140	11/25/2003	Akira Takahashi	Q78533	4319

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EXAMINER

KYLE, MICHAEL J

ART UNIT                      PAPER NUMBER

3677

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/06/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

<b>Application No.</b> 10/720,140	<b>Applicant(s)</b> TAKAHASHI, AKIRA	
<b>Examiner</b> Michael J. Kyle	<b>Art Unit</b> 3677	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1)  Responsive to communication(s) filed on 14 November 2006.
- 2a)  This action is **FINAL**.
- 2b)  This action is non-final.
- 3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4)  Claim(s) 1 and 3-6 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5)  Claim(s) \_\_\_\_\_ is/are allowed.
- 6)  Claim(s) 1,3-6 is/are rejected.
- 7)  Claim(s) \_\_\_\_\_ is/are objected to.
- 8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9)  The specification is objected to by the Examiner.
- 10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a)  All b)  Some \* c)  None of:
    - 1.  Certified copies of the priority documents have been received.
    - 2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    - 3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1)  Notice of References Cited (PTO-892)
- 2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3)  Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 11/14/06.
- 4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5)  Notice of Informal Patent Application
- 6)  Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Objections*

1. In claim 1, the limitation “movement of the protrusion between the first and second positions” (lines 14-15) is objected to because the limitation appears to be referring to positions of the protrusion. The only “first position” and “second position” provided for in the claim are referring to positions of the lever. It is unclear if the first and second positions of the protrusion are different from first and second positions from the lever, or if there is a correlation between them.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1 and 3-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Wegner (U.S. Patent No. 6,082,158). Wegner discloses an actuator comprising a rotor (30), a lever (not numbered, shown in figure 13, portion supporting 37, connected to 36 and 38 via 39) swingable between first and second positions, and an engagement mechanism comprising a protrusion (37) and a guide mechanism (32, 33, 34) that makes the lever swing between the first and second position, and allows movement of the lever without turning the rotor. Wegner further discloses the guide mechanism to include a contact portion (32) that comes in contact with the protrusion (37), a guide portion (33) that guides the protrusion to the contact portion, and an allowing means (34) that allows, when the rotor stops rotating, movement of the protrusion between the

Art Unit: 3677

first and second positions without turning the rotor, wherein the rotor always stops at the allowing portion regardless of whether the lever is at the first position or the second position. The lever is swingable between the first and second positions without operation of the motor, only when allowed by the allowing means (34). For example, the lever is capable of being moved manually. An invention should be distinguished from the prior art in terms of structure rather than function (see MPEP 2114). Presently, the claimed "allowing portion" is claimed in terms of its function, (i.e. what it allows to occur) rather than its structure. Because Wegner discloses a feature that is structurally identical to the claimed allowing portion, it considered to be able to perform the same function.

4. With respect to claim 3, Wegner discloses the guide mechanism to include a first slide guide portion (non circular portion of 33) to slide the protrusion to the guide portion during rotation of the rotor in a first direction, and a second slide guide portion (circular portion of along the inner periphery of 33), that comes in contact with the protrusion to slide the protrusion to the movement support portion during rotation of the rotor in a second direction.

5. With respect to claims 4 and 5, Wegner discloses the contact portion (32) to have first and second contact portions (projecting portion of 32) extending in different directions. The first contact portion slides the lever to the second position during rotation of the rotor in a first direction. The second contact portion slides the lever to the first position during rotation of the rotor in the second direction.

6. With respect to claim 6, Wegner discloses the lever to be connected to a locking lever (36, 38) that witches between locked and unlocked positions of a door locking device.

***Response to Arguments***

Art Unit: 3677

7. Applicant's arguments filed November 14, 2006, have been fully considered but they are not persuasive. Applicant argues that in Wegner it is clear that there is a restriction in all rotational positions of the worm wheel, and no position where the protrusion, and thus, lever can move freely between the first and second positions. However, applicant has not provided any support as to how this "clear". Applicant addressed only the structure of the instant invention in this argument. In Wegner's figure 13 it appears the lever and protrusion could swing in a vertical direction because the allowing means 34 do prevent such movement. It is further noted that the claims do not associate the first and second positions to any particular position of the protrusion on rotor or allowing portion.

8. Applicant argues that there is no reason for Wegner's protrusion to be movable without rotation of the wheel. Examiner notes that for anticipation the prior art needs to teach the aspects of the claimed invention. Because Wegner shows every claimed aspect of the invention, the reasoning for the movement of the protrusion is not at issue. Further, there is no structural relationship in the claim between the protrusion, lever, rotor, or allowing means associated with the claimed first and second positions that precludes Wegner from meeting the limitations.

9. Applicant argues that there is no support for examiner's statement that the rotor always stops at the allowing portion regardless of which position the lever is at. This was addressed in the previous Office Action. Examiner has identified element 34 of Wegner as the allowing portion. The protrusion always stops on 34 as it never leaves the path of 34.

10. With regard to applicant's argument that the limitation "allowing means" should be interpreted as means-plus-function under 35 USC 112 6<sup>th</sup> paragraph, examiner notes that even when given this interpretation, the limitations still fail to overcome the teaching of Wegner.

Art Unit: 3677

Where means plus function language is used to define characteristics of a machine or manufacture invention, the language must be interpreted to read on only the structures or materials disclosed in the specification and equivalents thereof. It appears with this argument, applicant is attempting to have arc track described on page 10, lines 10-18, of the specification read into the claims. However, in this paragraph, the arc track is disclosed as being “disposed on” the allowing member, and not necessary as a feature or part of the allowing member. Beyond this, the allowing member is described only in term of function. Thus, when the limitation “allowing means” is read under 112 6<sup>th</sup>, there is still not any structure associated with the allowing means described in the specification, as the arc track in merely “disposed on” the allowing means, not part of the means. Even if the arc track were considered as part of the allowing means, Wegner still shows and arced portion (outward extending walls functioning as the outer boundary of the portion 34). The claim does not require any particular contact or relative motion between the protrusion and arc track. As noted in the body of the rejection above, an apparatus must be distinguished from the prior art in terms of structure rather than function (MPEP 2114).

### ***Conclusion***

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

12. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period

Art Unit: 3677

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael J. Kyle whose telephone number is 571-272-7057. The examiner can normally be reached on Monday - Friday, 8:30 am - 5:00 pm.

14. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Judy Swann can be reached on 571-272-7075. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

15. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

mk

  
Chuck Y. Mah  
Primary Examiner